

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Forbearance of the Verizon)	
Telephone Companies Pursuant to)	CC Docket No. 01-338
47 U.S.C. § 160(c))	
)	
)	

**Comments of
Communications Workers of America**

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The Communications Workers of America (CWA) urges the Commission to take prompt action to approve the Verizon petition requesting forbearance from any unbundling obligations for broadband elements under section 271 that the Commission has already removed from unbundling requirements under section 251.

The Verizon petition is one among a number of actions this Commission must take to accelerate deployment of broadband networks to all Americans. According to a recent study by the International Telecommunications Union, the United States is ranked a distant 11th in the number of per capita high-speed Internet connections. Korea ranks first, with 21.3 broadband subscribers per 100 inhabitants, Hong Kong is second with 14.9, Canada is third with 11.2, and the United States trails far behind with 6.9 broadband connections per 100 inhabitants.¹

The telecommunications industry is in a serious recession. Approximately 100,000 CWA-represented jobs in the telecommunications industry have been lost over the past two years. The Bell companies reduced capital expenditures by \$13.8 billion or 35 percent in 2002 compared to the prior year.²

In the *Triennial Review Order*, the Commission determined that refraining from imposing unbundling requirements on broadband would benefit consumers with accelerated deployment of advanced networks. To turn around and impose through the backdoor unbundling requirements under Section 271 authority would undermine this important policy goal. The Commission should therefore speedily approve Verizon's forbearance petition.

CWA is a labor organization representing approximately 700,000 workers employed in telecommunications, publishing, manufacturing, airlines, health care, state and local government,

¹ The ITU study is cited in Yochi J. Dreazen, "What's Slowing Us Down," *Wall Street Journal*, Oct. 13, 2003, R4.

² Company 10-Q earnings reports.

and other public and private organizations. CWA members work in all segments of the telecommunications industry, including local and long-distance telephony, cable, wireless, and Internet access. CWA members are also consumers of telecommunications services.

In the *Triennial Review Order*, the Commission eliminated most unbundling obligations on broadband, including fiber-to-the-premises loops, the packet-switched features, functionalities, and capabilities of hybrid loops, and packet switching. The Commission concluded that such requirements discourage investment in advanced networks by incumbents and competitors alike. The Commission reasoned that refraining from imposing unbundling requirements on the incumbents' new broadband investment "gives incumbent LECs an incentive to deploy fiber (and associated next generation network equipment, such as packet switches and DLC systems) and develop new broadband offerings for mass market consumers."³ Similarly, the Commission reasoned that foreclosing competitive LECs' access to the unbundled packet-based networks of the incumbents would stimulate competitive LECs "to continue to seek innovative access options, including the deployment of their own facilities necessary for providing broadband services to the mass market."⁴ The Commission concluded that freedom from unbundling requirements of broadband networks would lead to a competitive race to deploy next-generation networks, marking progress toward the important policy goal of the Telecommunications Act of

³ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking ("Triennial Review Order"), CC Dockets No. 01-338, 96-98, 98-147, Aug. 21, 2003 (rel), ¶ 290.

⁴ *Id.*

1996 “to encourage deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁵

In addition, the Commission correctly concluded that unbundling of broadband is unnecessary because intermodal competition is thriving in the nascent broadband market.⁶ According to the Commission’s own data, cable modems are beating DSL two to one in the residential and small business Internet access market.⁷ Competing providers do not need access to incumbents’ broadband networks since they are the dominant players providing broadband access over their own facilities. Imposing broadband unbundling requirements under Section 271 would apply only to Bell companies, not to cable providers, even though cable providers dominate the broadband Internet access market.

The Commission has the clear legal authority to grant the instant petition. First, Section 706 of the Telecommunications Act requires the Commission to encourage the “deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by utilizing, among other methods, “regulatory forbearance” and “other regulating methods that remove barriers to infrastructure investment.”⁸ The section 706 mandate to promote broadband investment through “regulatory forbearance” singles out broadband facilities for special protection from unnecessary regulation.

Second, Section 10 of the Communications Act provides the Commission the authority to forbear from regulations that are (1) “not necessary for the protection of consumers”; and (2) are

⁵ 47 U.S.C. § 706(a).

⁶ Triennial Review Order, ¶ 286.

⁷ As of December 21, 2002, in the residential and small business markets there were 11.3 cable modem and 5.7 DSL high-speed (over 200 kbps in at least one direction) Internet access customers. For advanced services (over 200 kbps in two directions), the numbers were 8.3 cable modem and 2.4 DSL residential customers. FCC, *High-Speed Services for Internet Access: Status as of December 31, 2002*, Tables 3 and 4, June 10, 2003.

“consistent with the public interest.”⁹ The Commission has already determined in the *Triennial Review Order* that unbundling of broadband elements is not necessary and is in the public interest by stimulating a competitive race to deploy advanced networks.¹⁰ In addition, imposing unbundling requirements under section 271 authority would require incumbent carriers to redesign integrated fiber network architecture to create new and artificial points of access to individual components and to design new and costly operations support systems. Only the Bell companies, and not the cable companies that are dominant in the high-speed Internet access market, would be subject to this requirement.

Third, section 10(d) gives the Commission authority to forbear from applying the requirements of section 271 once “those requirements have been fully implemented.”¹¹ The Commission has already reached this conclusion. The Commission is authorized to grant long-distance approval only after it determines that the petitioning Bell company “has fully implemented the competitive checklist.”¹² The Commission has granted long-distance approval in 49 states and the District of Columbia. Thus, the Commission has already concluded that the requirements of section 271 “have been fully implemented” in these 49 states and the District of Columbia. As such, the section 10(d) limitation of section 271 forbearance authority until that section “has been fully implemented” is not relevant to the instant petition.

⁸ 47 U.S.C. § 706(a).

⁹ 47 U.S.C. ¶160.

¹⁰ “We conclude...that applying section 251(c) unbundling obligations to next-generation network elements would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, in direct opposition to the express statutory goals authorized in section 706.” *Triennial Review Order*, ¶ 288.

¹¹ 47 U.S.C. § 160(d).

¹² 47 U.S.C. § 271(d)(3)(A)(i).

Moreover, the section 271 checklist was never designed to interfere with a Bell company's deployment of an advanced packet-switched network. Rather, the purpose of the section 271 competitive checklist is to open up the Bell companies' legacy circuit switched network.

The Commission should act without delay to approve the Verizon 251/271 forbearance petition. Imposing unbundling requirements on new broadband networks under section 271 would have the same negative effects that the Commission acknowledged such obligations would have under section 251. Forbearance from unbundling of broadband networks is one important step to encourage investment in competing next-generation services. Finally, the Commission has the legal authority to grant this petition.

Respectfully submitted,

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Dated: November 17, 2003